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The Court, having reviewed the record and the findings and recommendations of the Magistrate Judge, no objection having been made, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed October 8, 2010. It is, therefore, ORDERED that the respondent's motion to dismiss be GRANTED and the petition is DISMISSED without prejudice and that judgment be entered in favor of the Respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/ 

JEROME B. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
November 1, 2010